

Date of Hearing: May 5, 2020

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 2443 (Weber) – As Introduced February 19, 2020

SUBJECT: Deceptive practices: debt settlement

SUMMARY: This bill would include, as an unlawful act under the Consumer Legal Remedies Act, unlawful or deceptive acts in the settlement of debt owed to another, including violations of the provisions regulating proraters. The bill would specify that vicarious liability under this provision would be imputed to persons or entities providing payment processing services for any company that negotiates or promises to negotiate the settlement of debts owed by another.

EXISTING LAW:

- 1) Prohibits, under the Consumer Legal Remedies Act (CLRA), any unfair methods of competition, or any acts or practices by any person which either results in or is intended to result in the sale or lease of goods or services to any consumer. (Civ. Code Sec. 1750 et seq.)
- 2) Provides, under the CLRA, that any consumer who suffers damage as a result of a practice declared to be unlawful under the CLRA may bring an action against that person to recover damages, as specified, and allows for a class action suit to be filed on behalf of a class of consumers adversely affected by an unfair method of competition, act or practice. (Civ. Code Secs. 1780, 1781.)
- 3) Provides, under the Check Sellers, Bill Payers and Proraters Law, for the licensing and regulation of check sellers, bill payers and proraters, and defines proraters as a person who, for compensation, engages in whole or in part in the business of receiving money or evidences thereof for the purpose of distributing the money or evidences thereof among creditors in payment or partial payment of the obligations of the debtor. (Fin. Code Sec. 12000 et seq.)

FISCAL EFFECT: None. This bill has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of the bill:** This bill seeks to protect consumers by amending the Consumer Legal Remedies Act to ensure that they have the ability to bring an action for damages when violations of law regulating debt settlement practices have been violation. This bill is sponsored by the California Low Income-Consumer Coalition (CLICC).
- 2) **Author's Statement of Criticality:** In response to the unique constraints the COVID-19 crisis has placed on the legislative process, this Committee elected to focus attention this session on bills that address only the most urgent issues and issues critical for an efficient recovery from the pandemic. In order to prioritize bills that require immediate attention, the Committee asked the author of each bill to provide a Statement of Criticality explaining the applicability of one or more of the following criteria to that bill:

- the bill addresses a problem that was created by, or has been significantly exacerbated by, the ongoing public health crisis due to COVID-19, or the response thereto;
- the bill addresses an urgent problem that presents a threat to the safety and security of Californians and must be resolved immediately; or
- the bill makes a technical change to an existing program or function that must be immediately adopted to preserve the utility of that program or function.

In response, the Author writes:

AB 2443 provides critical protections for California consumers facing an onslaught of economic turmoil. This bill protects consumers from predatory behavior by debt settlement companies. It keeps hard-earned wages, benefits, and stimulus payments paying for food and necessities of life instead of going to service old defaulted debt. COVID-19 is causing an economic crisis for the over 800,000 Californians last week alone who filed for unemployment benefits and the many more who will soon seek relief. For employees in the gig economy and family members who depend on the income of those who are out of work, the bills are already beginning to pile up. People who are struggling financially fall prey to scams and solutions that sound too good to be true, as the promises of unscrupulous debt settlement companies that promise to stop all the collection activity for defaulted credit card bills.

The Committee agrees that the issues addressed by this bill are timely and critical under the current circumstances. This bill seeks to further deter illegal practices that have long created additional hardship for many individuals attempting to clear their debt. The economic impacts of COVID-19 demand that vulnerable Californians are protected from financial predators wherever possible.

- 3) **Amends the Consumer Legal Remedy Act to provide consumers with an additional avenue for relief:** Highly regulated by the Federal Trade Commission (FTC), debt settlement service providers negotiate on behalf of consumers directly with their creditors to secure less than full balance settlements of unsecured debts. Debt settlement typically serves consumers who cannot qualify for or afford other debt relief options, such as debt consolidation loans or consumer credit counseling, or who are unable to satisfy the means test required as a prerequisite to personal bankruptcy. According to the American Fair Credit Council, “Debt settlement companies provide considerable benefits to consumers, and relatively quickly. Consumers generally see initial account settlements within 4-6 months of starting a debt settlement program. More than 96 percent of settlements result in debt reduction that is greater than consumers’ related fees. On average, consumers receive \$2.64 in debt reduction for every \$1 spent in fees, and the average debt settlement client resolves their debt for 65 cents on the dollar relative to what they initially owed, inclusive of any fees assessed.” (Regan Reports, *Options for Consumers in Crisis: An Updated Economic Analysis of The Debt Settlement Industry*, March 2017, found at <<https://americanfaircreditcouncil.org/wp-content/uploads/2018.02.05-AFCC-Report-Consumers-in-Crisis.pdf>> [as of May 3, 2020].)

Separate from legitimate debt settlement practices, the FTC notes that debt relief service scams target consumers with significant debt by falsely promising to negotiate with their

creditors to settle or otherwise reduce consumers' repayment obligations. These operations often charge cash-strapped consumers large up-front fees, but then fail to help them settle or lower their debts. The FTC has brought scores of law enforcement actions against these companies, and the agency has partnered with the states to bring hundreds of additional lawsuits pursuant to state consumer protection laws. (FTC, *Debt Relief and Credit Repair Scams*, found at <<https://www.ftc.gov/news-events/media-resources/consumer-finance/debt-relief-credit-repair-scams>> [as of May 3, 2020].)

Addressing the harm that may befall consumers from a variety of deceptive and misleading business practices, California offers consumers protections by way of the Consumer Legal Remedies Act (CLRA), which allows consumers to obtain, among other relief, actual damages, injunctive relief, and court costs and attorneys fees. (Civ. Code Sec. 1750 et seq.) In order to bring a claim under the CLRA, a specific unlawful or deceptive act, enumerated in the Act itself, must have been committed. This bill would add specific acts and omissions related to the debt settlement industry to the CLRA, thereby providing California consumers with an additional avenue to seek relief.

Explaining the need for this bill, a coalition of organizations including CLICC, Californians for Economic Justice, and the Public Law Center write in support:

Under the California Legal Remedies Act, consumers can hold debt settlement companies and debt management services accountable for deceptive practices. However, existing law lacks specificity in holding accountable those individual actors such as payment processors and prorater services for their broken promises. AB 2443 will bring much-needed clarification to already existing law under the California Consumer Legal Remedies Act by clarifying that regulation of all entities operating in the debt settlement industry shall include proraters. Furthermore, this bill will strengthen consumer protection around the misrepresentation and fraud committed by debt settlement companies in the advertisement and solicitation of their services to consumers.

- 4) **Author's amendments:** As in print, this bill presents a number of drafting issues which the author has been discussing with the Committee and stakeholders. For example, the bill would specifically include attorneys in the paragraph it adds to the CLRA. While attorneys often provide debt settlement services, including them expressly in the language of the bill is unnecessary because they are already considered a "person" within the CLRA. More problematically, expressly including them in the bill may have the unintended consequence of excluding them from liability for violations of that law. Additionally, as in print, this bill would assign vicarious liability to persons or entities providing payment processing services for debt settlement companies. This is arguably too broad and would capture financial institutions, like depository institutions, with no knowledge of the business practices of the predatory entities this bill seeks to target.

Accordingly, the author offers the following amendments which would strike and replace the current language the bill adds to the CLRA. The amendments would ensure that businesses who engage in debt settlement services or process payments for debt settlement services are liable under the CLRA if they deceive consumers by failing to make certain disclosures which are required by law, failing to translate certain contracts if required by law, or making false or misleading statements regarding consumer outcomes. The amendments would also ensure that injured consumers may bring claims under the CLRA to recover damages when a

debt settlement service has not followed the requirements of the Check Sellers, Bill Payers and Proraters Law.

Author's amendments:

On page 7, strike lines 1 – 7 and insert:

(28) (A) Engaging in the business of receiving or soliciting money or evidences thereof, or processing payment for the purpose of distributing the money or evidences thereof, among creditors in payment or partial payment of the obligations of the debtor, in a manner that deceives consumers including by (i) failing to disclose clearly and conspicuously the terms and risks of the program; (ii) failing to adhere to the requirements of section 1632 of the Civil Code; (iii) making false or misleading statements regarding consumer outcomes, including the impact of debt settlement on credit score and credit rating; or (iv) failing to disclose clearly and conspicuously that certain income and assets are exempt from collection as specified in Chapter 4 (commencing with section 703.010) of Title 9 of the Code of Civil Procedure.

(B) Otherwise engaging in the business of a prorater in a manner that violates Division 3 (commencing with Section 12000) of the Financial Code.

(C) Providing payment processing services, for which a fee is charged to a consumer, to a prorater that is acting in violation of paragraph (A) or (B).

(D) This paragraph does not apply to entities that are certified as tax-exempt by the Internal Revenue Service.

- 5) **Remaining concerns of opposition:** The California Bankers Association (CBA) and the California Credit Unions League (CCUL) oppose this bill unless amended to address a number of concerns. While the amendments described in Comment 4 above address a number of their concerns, CBA and CCUL continue to argue that the bill is too broad in scope and should be narrowed to target debt settlement companies specifically. CBA and CCUL write in opposition:

As currently drafted, measure AB 2443 is overly broad, impacting even depository institutions and a deposit account relationship. By lacking definitions of the terms “settlement” and “payment processing services,” measure AB 2443 may impact any party in the flow of value from the debtor to the ultimate recipient, including depository institutions and our affiliates. It is our understanding that this measure is intended to impact specific “debt settlement companies,” however without clear definitions the possibilities of this measure’s reach are left in the air.

CBA and CCUL have provided language to the author and Committee which would exempt “any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union or subsidiary thereof, industrial bank or industrial loan company, finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance

lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.”

Arguably, a list this exhaustive raises questions as to which type of payment processing service entities would actually be covered by this bill. To ensure that the bill achieves its desired effect, the author may instead wish to amend the bill to specify the exact type of payment processing companies they seek to target.

- 6) **Related legislation:** AB 2524 (Wicks) would amend the Check Sellers, Bill Payers and Proraters Law to, among other things, clarify the definition of “prorater” to include all of the entities engaged in debt settlement, create a private right of action for consumers to sue proraters and debt settlement companies for damages, and require regular reporting of information by proraters. This bill is currently in the Assembly Banking & Finance Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Low Income-Consumer Coalition (sponsor)
California Asset Building Coalition
Californians for Economic Justice
California Reinvestment Coalition
Center for Responsible Lending
Consumer Federation of California
Consumer Reports
East Bay Community Law Center
National Consumer Law Center
New Economics for Women
Public Law Center
University of California, Irvine, Consumer Law Clinic

Opposition

California Bankers Association (unless amended)
California Credit Unions League (unless amended)

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